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(The Supreme Court)

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*Y. V. Chandrachud, R. S. Sarkaria and A. C. Gupta, JJ.*

Madurai District Central Co-operative Bank Ltd. .. *Appellant**

v.

Third, Income-tax Officer, Madurai .. *Respondent.*

(A) *Co-operative society—Banking business—Exemption from income-tax and super-tax—Whether liable to pay additional surcharge on non-business income under Finance Act*, 1963.

(B) *Legislative competence—Parliament—Whether can introduce new charge in Finance Act—Whether can withdraw exemption granted under Income-tax Act by making provision in Finance Act.*

(C) *Finance Acts—Nature of—Scope and functions.*

(D) *Income-tax Act (XLIII of* 1961), *sections* 81 (i) (*a*), 99 (1) (v), 110.

(E) *Finance Act*, 1963, *sections* 2 (1) (*a*), 2 (8), 3; *Schedule I, part I, para. A, clause* (c).

Even though the business income of a co-operative society engaged in the business of banking is exempt from income-tax and super-tax on its business income under sections 81 (i) (*a*) and 99 (1) (*v*) of the Income-tax Act, 1961 it is liable to pay additional surcharge on its non-business income under clause (*c*) of Paragraph A of Part I of the First Schedule to the Finance Act, 1963 read with section 2 (1) (*a*) (ii) of that Act. This is so not because additional surcharge is payable by law on non-business income but because it is payable on residual income and residual income, by definition, includes non-business income as reduced. In fact, it consists of the amount of total income as reduced by the amounts mentioned in clauses (*a*) and (*b*) of section 2 (8) of the Act. [*Para.* 28.]

By Article 246 (1) of the Constitution, Parliament has the exclusive power to make laws with respect to any of the matters in List I of the Seventh Schedule. The Income-tax Act, 1961 and the annual Finance Acts are enacted by Parliament in exercise of the power conferred by Article 246 (1) read with Entry 82 of List I. Once Parliament has the legislative competence to enact a law with respect to a certain subject-matter, the limits of that competence cannot be judged further by the form or manner in which that power is exercised. Accordingly, though it would be unconventional for Parliament to amend a taxing statute by incorporating the amending provisions in an Act of a

* Civil Appeal No. 1795 of 1970.

28th July, 1975.

different pith and substance, such a course would not be unconstitutional. [*Para.* 13.]

It is true that the Income-tax Act is a permanent Act while the Finance Acts are passed every year and their primary purpose is to prescribe the rates at which the income-tax will be charged under the Income-tax Act. But that does not mean that a new and distinct charge cannot be introduced under the Finance Act. If Parliament has the legislative competence to introduce a new charge of tax, it may exercise that power either by incorporating that charge in the Income-tax Act or by introducing it in the Finance Act or for the matter of that in any other statute. What is not "income" under the Income-tax Act can be made "income" by a Finance Act, an exemption granted by the Income-tax Act can be withdrawn by the Finance Act or the efficacy of that exemption may be reduced by the imposition of a new charge. Subject to constitutional limitations, additional tax revenue may be collected either by enhancing the rate or by the levy of a fresh charge. Parliament through the medium of a Finance Act, may as much do the one as the other. The Finance Acts though annual Acts are not necessarily temporary Acts for they may and often do contain provisions of a general character which are of permanent operation. Thus Parliament can introduce a charging provision in a Finance Act. [*Para.* 14.]

Harshness of a taxing statute, apart from a possible challenge to it under Article 13 of the Constitution, cannot be an invalidating circumstance. [*Para.* 12.]

Additional surcharge is a distinct charge, not dependent for its leviability on the assessee's liability to pay income-tax or super-tax. The income-tax computed at a certain rate is by section 2 (1) (*a*) (ii), of the Finance Act, 1963, to be further increased by an additional surcharge for purposes of the Union. By section 3 of the Finance Act of 1963 no account can be taken of the additional surcharge in calculating any relief, rebate or deduction in respect of income-tax payable on the total income of an assessee which includes any income on which no income-tax is payable or in respect of which a deduction of income-tax is admissible. Section 3 by its terms, has precedence over anything contained in Chapter VII or Chapter VIII-A or in section 110 of the Income-tax Act or section 2 (5) of the Finance Act itself. Additional surcharge is treated in this way as falling in a separate category. [*Paras.* 26 *and* 27.]

Even if section 81 (*i*) (a) of the Income-tax Act, 1961, were to grant an express exemption from surcharges on business income, Parliament could take away that exemption or curtail the benefit available under it by making an appropriate provision in the Finance Act. If while legislating on a matter within its competence Parliament can grant an exemption, it is surely competent to it to withdraw that exemption in exercise of the self-same power. [*Para.* 21.]

Both the purpose and concept of the additional surcharge are different from those of income-tax. The additional surcharge is leviable exclusively for purposes of the Union so that the entire proceeds of such surcharge may, under Article 271 of the Constitution, form part of the Consolidated Fund of India. Then again, the additional surcharge levied for purposes of the Union is to be calculated not on total income like the income-tax but it is to be calculated on the residual income. In order that the exemption granted to co-operative banks by section 81 (*i*) (a) of the Income-tax Act, 1961, may not lose its meaning and content, section 2 (8) of the Finance Act, 1963, introduces the concept of residual income

on which alone the additional surcharge is payable. The residual income is not the same as the business income of a co-operative bank, which is exempt under section 81 (*i*) (a) from income-tax. For ascertaining the residual income, the total income is reduced by the amount of capital gains and further by the amount of tax (other than additional surcharge) which would have been charged on such reduced total income on the assumption that the whole of it was liable to be brought to tax. [*Para.* 25.]

Additional surchage indubitably partakes of the nature and essential characteristics of income-tax. It is a tax on residual income and by reason of the definition contained in section 2 (8) of the Finance Act, 1963, "residual income" would include non-business income which under the Income-tax Act is chargeable to income-tax. Thus the additional surcharge, though levied by the Finance Act, 1963, independently of the Income-tax Act, is but a mode of levying tax on a portion of the assessee's income computed in accordance with the definition in section 2 (8) of the Finance Act, 1963. [*Para.* 31.]

Cases referred to :—

Kesoram Industries and Cotton Mills Ltd. v. *Commissioner of Wealth-tax (Central) Calcutta*, (1966) 2 S.C.R. 688: (1966) 1 S.C.J. 312: 59 I.T.R. 767: (1966) 1 Comp. L.J. 154: (1966) 1 I.T.J. 277 : A.I.R. 1966 S.C. 1370; *McGregor and Balfour Ltd., Calcutta* v. *Commissioner of Income-tax, West Bengal*, (1955) 27 I.T.R. 389; *Hari Krishna Bhargav* v. *Union of India*, (1966) 2 S.C.R. 22: (1966) 1 I.T.J. 77: (1966) 1 S.C.J. 131: 59 I.T.R. 243: A.I.R. 1966 S.C. 619 ; *Commissioner of Income-tax, Kerala* v. *K. Srinivasan*, 83 I.T.R. 346 : (1972) 2 I.T.J. 454 : (1972) 2 S.C.J. 571: A.I.R. 1972 S.C. 491 ; *McGregor and Balfour Ltd., Calcutta* v. *Commissioner of Income-tax, West Bengal*, 1959 S.C.J. 1037: 36 I.T.R. 65: A.I.R. 1959 S.C. 771 ; *United Commercial Bank Ltd.* v. *Commissioner of Income-tax, West Bengal*, 32 I.T.R. 688 : 1958 S.C.J. 46 : 1958 S.C.R. 79; A.I.R. 1957 S.C. 918 ; *East India Housing and Land Development Trust Ltd.* v. *Commissioner of Income-tax, West Bengal*, (1961) 42 I.T.R. 49 (S.C.); *Ramanathan Chettiar* v. *Commissioner of Income-tax, Madras-3*, 88 I.T.R. 169 : (1973) 1 I.T.J. 502: (1973) 2 S.C.J. 81 : (1973) 2 M.L.J. (S.C.) 8: (1973) 2 An. W.R. (S.C.) 8: A.I.R. 1973 S.C. 2172; *Allahabad District Co-operative Bank Ltd.* v. *Union of India*, (1972) 83 I.T.R. 895 : (1972) Tax. L.R. 57.

Appeal from the judgment and order dated 15th October, 1968 of the Madras High Court in Writ Petition No. 2252 of 1965.

S. T. Desai, Senior Advocate (*T. A. Ramachandran*, Advocate, with him), for Appellant.

N. D. Karkhanis, Senior Advocate, (*S. P. Nayar*, Advocate, with him), for Respondent.

The Judgment of the Court was delivered by

Chandrachud, J.—The appellant filed a writ petition in the High Court of Madras, under Article 226 of the Constitution to challenge an assessment order dated 22nd August, 1963 made by the respondent, levying additional surcharge on its residual income. The High Court dismissed the writ petition by its judgment, dated 15th October, 1968 but it has granted to the appellant a certificate to file an appeal to this Court under Article 133 (1) (*a*) and (*c*) of the Constitution.

2. The appellant is a co-operative society engaged in the business of banking. Its total income for the assessment year 1963-64 was computed by the respondent at Rs. 10,00,098. Out of this,

Rs. 9,48,335 was its business income while Rs. 51,763 was its income from other sources. Since, under section 81 (*i*) (a) of the Income-tax Act, 1961 a co-operative society engaged in the business of banking is not liable to pay income-tax on its business income, the tax amounting to Rs. 23,845.47 was charged on Rs. 51,763 only though for the purposes of rate the income was taken at Rs. 9,48,335 in view of section 110 of the Act. Applying the Finance Act XIII of 1963, the respondent computed the residual income of the appellant at Rs. 5,39,386 and levied on it an additional surcharge of Rs. 52,828.60. Thus the total tax levied on the appellant came to Rs. 23,845.47, plus Rs. 52,828.60 *i.e.*, Rs. 76,674.07.

3. The main grievance of the appellant before the High Court was that whereas its taxable income was only Rs. 51,763 a tax of Rs. 76,674.07, was imposed on it. The relevant provisions of the Finance Act were accordingly said to be invalid as they could not subject to additional surcharge an income which was exempt from tax under the provisions of the Income-tax Act. The additional surcharge, it was contended, was intended as an additional levy on the income-tax and had no independent existence apart from it. These contentions were rejected by the High Court and hence this appeal.

4. Section 81 of the Income-tax Act, 1961, was deleted by the Finance Act XX of 1967, with effect from 1st April, 1968 but its provisions were incorporated by the same Finance Act in section 80-P. section 81 (*i*) (a) read thus :

"81. *Income of co-operative societies*—Income-tax shall not be payable by a co-operative society—

(*i*) in respect of the profits and gains of business carried on by it, if it is

(a) a society engaged in carrying on the business of banking or providing credit facilities to its members,"

5. It is indisputable that by reason of this provision, the banking income of the appellant amounting to Rs. 9,48,335 is exempt from income-tax. It is equally clear that by reason of section 99 (1) (*v*) of the Act of 1961 the appellant is not liable to pay super-tax on its business income. That section provides that where the assessee is a co-operative society, super-tax shall not be payable by it on any income in respect whereof no income-tax is payable by it by virtue of the provisions of section 81.

6. The dispute really centres round the provisions of Finance Act XIII of 1963. The provisions of that Act which are relevant for our purpose are sections 2 (1) (*a*), 2 (8), 3, Paragraph A (ii) of Part I of the First Schedule and clause (*c*) of that portion of Part I, called "Surcharges on Income-tax".

7. Section 2 (1) (*a*) of the Finance Act, 1963 provides that :

"2. *Income-tax and super-tax.*—(1) Subject to the provisions of sub-sections (2), (3), (4) and (5), for the assessment year commencing on the 1st day of April, 1963,—

(*a*) income-tax shall be charged at the rates specified in Part I of the First Schedule and,—

(i) in the cases to which paragraphs, A, B, C and E of that Part apply, shall be increased by a surcharge for purposes of the Union, and, except in the cases to which the said paragraph E applies, a special surcharge, calculated in either case in the manner provided therein ; and

(ii) in the cases to which paragraphs A and C of the aforesaid Part apply, shall further be increased by an additional surcharge for purposes of the Union (hereinafter referred to as additional surcharge) calculated in the manner provided in the said schedule,"

8. Section 2 (8) provides that :

"For the purposes of paragraphs A and C of Part I of the First Schedule, the expression 'residual income' means the amount of the total income as reduced by—

(*a*) the amount of the capital gains, if any, included therein ; and

(*b*) the amount of tax (exclusive of additional surcharge) which would have been chargeable on such reduced total income if it had been the total income no part of which had been exempt from tax and on no portion of which deduction of tax had been admissible under any provisions of the Income-tax Act or this Act."

9. Section 3 provides that :

"Notwithstanding anything contained in the provisions of Chapter VII or Chapter VIII-A or section 110 of the Income-tax Act or sub-section (5) of section 2 of this Act, in calculating any relief, rebate or deduction in respect of income-tax payable on the total income of an assessee which includes any income on which no income-tax is payable or in respect of which a deduction of income-tax is admissible under any of the aforesaid provisions, no account shall be taken of the additional surcharge."

10. The First Schedule of the Finance Act, 1963, consists of three parts out of which we are only concerned with Part I. Part I which is called "Income-tax and surcharges on income-tax" consists of Paragraphs A, B, C, D and E, out of which we are concerned with Paragraph A only. Clause (*ii*) of Paragraph A prescribes rates of income-tax for incomes accruing *inter alia* to "association of persons". Since a co-operative society is an association of persons, Paragraphs A of Part I would apply to the case of the appellant for the purposes of section 2 (1) (*a*) (ii) of the Finance Act of 1963, though not for the purpose of bringing its exempted business income to income-tax.

11. That portion of Part I, Paragraph A called "Surcharges on Income-tax" provides : "The amount of income-tax computed at the rates herein before specified shall be increased by the aggregate of the surcharges calculated as under". Clause (*a*) provides for a surcharge for the purposes of the Union at the rates mentioned in sub-clauses (*i*), (*ii*) and (*iii*). Clause (*b*) provides for the levy of a special surcharge. Clause (*c*) with which we are concerned provides for the levy of "an additional surcharge for the purposes of the Union calculated on the amount of the residual income" at the rates mentioned therein.

12. The grievance of the appellant, which appears to have been pressed before the High Court with some earnestness, that the tax levied upon it exceeds its taxable income can afford no true guide to the construction of the relevant provisions of the Income-tax Act or the Finance Act. Harshness of a taxing statute, apart from a possible challenge to it under Article 13 of the Constitution, cannot be an invalidating circumstance. But the grievance on this score is basically misconceived. It assumes, what has to be examined, that no part of the income exempted from income-tax and super-tax under the Income-tax Act can be brought to tax by a Finance Act. The total income of the appellant was computed at Rs. 10,00,098. By reason of sections 81 (i) (*a*) and 99 (1) (*v*) of the Income-tax Act, 1961, the appellant enjoys an exemption from income-tax and super-tax in respect of its business income which amounts to Rs. 9,48,335. The balance, *viz.*, Rs. 51,763 which was the appellant's income from other sources was alone taxable under the Act of 1961 and a tax

of Rs. 23,845.47 was imposed on that income. The Finance Act of 1963 subjects "residual income" to certain charges and such income was computed, admittedly, correctly, at Rs. 5,39,386. An additional surcharge of Rs. 52,828.60 was levied on the residual income. Thus on the assumption that the Finance Act, validly and on a true interpretation, imposes the additional surcharge on residual income, the tax imposed on the appellant is Rs. 23,845.47 plus Rs. 52,828.60. The total tax of Rs. 76,674.07 thus imposed is far less than the appellant's total taxable income arrived at by the addition of its non-business income and the residual income. That leads to the inquiry first as regards the scope of a Finance Act and then as regards the interpretation of the Finance Act of 1963.

13. Learned counsel for the appellant, during the course of his arguments, gave up the challenge to the power of the Parliament to impose a new charge by a Finance Act. This concession was properly made. By Article 246 (1) of the Constitution, Parliament has the exclusive power to make laws with respect to any of the matters in List I of the Seventh Schedule. Entry 82 in List I relates to "taxes on income other than agricultural income". The Income-tax Act, 1961 and the annual Finance Acts are enacted by the Parliament in exercise of the power conferred by Article 246 (1) read with Entry 82 of List I. Once the Parliament has the legislative competence to enact a law with respect to a certain subject-matter, the limits of that competence cannot be judged further by the form or manner in which that power is exercised. Accordingly, though it would be unconventional for the Parliament to amend a taxing statute by incorporating the amending provision in an Act of a different pith and substance, such a course would not be unconstitutional.

14. Much more so can the Parliament introduce a charging provision in a Finance Act. True, as said in *Kesoram Industries and Cotton Mills Ltd.* v. *Commissioner of Wealth-tax (Central) Calcutta*[1], that the Income-tax Act is a permanent Act while the Finance Acts are passed every year and their primary purpose is to prescribe the rates at which the income-tax will be charged under the Income-tax Act. But that does not mean that a new and distinct charge cannot be introduced under the Finance Act. Exigencies of the financial year determine the scope and nature of its provisions. If the Parliament has the legislative competence to introduce a new charge of tax, it may exercise that power either by incorporating that charge in the Income-tax Act or by introducing it in the Finance Act or for the matter of that in any other statute. The alternative in this regard is generally determined by the consideration whether the new charge is intended to be more or less of a permanent nature or whether its introduction is dictated by the financial exigencies of the particular year. Therefore, what is not "income" under the Income-tax Act can be made "income" by a Finance Act; an exemption granted by the Income-tax Act can be withdrawn by the Finance Act or the efficacy of that exemption may be reduced by the imposition of a new charge. Subject to constitutional limitations, additional tax-revenue may be collected either by enhancing the rate or by the levy of a fresh charge. The Parliament, through the medium of a Finance Act, may as much do the one as the other. In *McGregor and Balfour Ltd. Calcutta* v *Commissioner of Income-tax, West Bengal*[2], which was affirmed by this Court in *McGregor and Balfour Ltd.* v. *Commissioner of Income-tax, West Bengal*[3], Chakravarti C.J., delivering the judgment of a Division

1. (1966) 2 S.C.R. 688 : (1966) 1 S.C.J. 312 : 59 I.T.R. 767: (1966) 1 Comp. L.J. 154 : (1966) 1 I.T.J. 277: A.I.R. 1966 S.C. 1370.
2. (1955) 27 I.T.R. 389.
3. 36 I.T.R. 65 : 1959 S.C.J. 1037 : A.I.R. 1959 S.C. 771.

Bench observed that the Finance Acts though annual Acts are not necessarily temporary Acts for they may and often do contain provisions of a general character which are of a permanent operation.

15. In *Hari Krishna Bhargav* v. *Union of India and another*[1] an assessee challenged the scheme of annuity deposits on the ground that the Parliament had no competence to incorporate in the Income-tax Act a provision which was substantially one relating to borrowings by the Central Government from a class of taxpayers. That scheme was introduced by Finance Act 5 of 1964 which incorporated Chapter XXII. A containing section 280-A to section 280-X in the Income-tax Act, 1961. The challenge was repelled by this Court on the ground that if the Parliament had the legislative competence to pass an Act for collecting annuity deposits from tax payers, nothing contained in the Constitution disentitled it "as a matter of legislative arrangement to incorporate the provisions relating to borrowing from tax payers in the Income-tax Act or any other statute."

16. This discussion became necessary in spite of the appellant's concession of the Parliament's legislative competence because for a proper understanding of the provisions of the Finance Act, 1963, it is essential to appreciate that a Finance Act may not only prescribe rates but also introduce a new charge.

17. We will now proceed to consider the provisions of the Finance Act, 1963 under which the respondent has levied additional surcharge on the appellant's residual income. The question for consideration is whether clause (*c*) of the portion "surcharges on Income-tax" occurring in Paragraph A of Part I introduces a new charge in the shape of additional surcharge so that the said charge can be levied even on a part of the appellant's income which is exempt from income-tax and super-tax under sections 81 (*i*) (a) and 99 (1) (*v*) of the Act of 1961.

18. The history of Indian income-tax, according to appellant's counsel, shows that surcharges by way of increase in the amount of income-tax are nothing but income-tax and therefore the expression "income-tax" occurring in sections 4 and 81 of the Act of 1961 and in section 2 and the First Schedule of the Finance Act, 1963, includes surcharges. To put it differently, the argument is that the exemption granted by section 81 (*i*) (a) extends to surchages also as a result whereof a co-operative society engaged in the business of banking is neither liable to pay income-tax nor any of the surcharges on its business income.

19. In *Commissioner of Income-tax, Kerala* v. *K. Srinivasan*[1], on which the appellant relies, this Court has traced the history of the concept of "surcharge" in the tax laws of our country. After considering the report of the Committee on Indian Constitutional Reforms, the provisions of the Government of India Act, 1935 the provisions of Articles 269, 270 and 271 of the Constitution and the various Finance Acts this Court held, differing from the High Court, that the word "income-tax" in section 2 (2) of the Finance Act, 1964 includes surcharges and the additional surcharge.

20. This case does not touch the point before us. In that case, the assessee's income for the accounting year ending 30th March, 1964 consisted mainly of his salary. Section 2 (2) (*a*) of the Finance Act, 1964 did not by itself refer to any surcharge but it provided that in making the assessment for the assessment year commencing on

1. (1966) 2 S.C.R. 22 : (1966) 1 I.T.J. 77 : (1966) 1 S.C.J. 131 : 59 I T R. 243 : A.I.R. 1966 S.C. 619.

1. 83 I.T.R. 346 : (1972) 2 I.T.J. 454 : (1972) 2 S.C.J. 571 : A.I.R. 1972 S.C. 491.

1st April, 1964 the "income-tax" payable by the assessee on his salary-income shall be an amount bearing to the total amount of "income-tax" payable according to the rates applicable under the operation of the Finance Act, 1963 on his total income, the same proportion as the salary-income bears to the total income. The question which arose for consideration was whether the words "income-tax payable according to the rates applicable under the operation of the Finance Act, 1963" included surcharges which were leviable under the Act of 1963. The question was answered by this Court in the affirmative. As the judgment shows, "the essential point for determination" was "whether surcharge is an additional mode or rate for charging income-tax" (page 351). The Court held that it was. The question before us is whether, even if the surcharge is but an additional mode or rate for charging income-tax, the Finance Act of 1963 authorises by its terms the levy of additional surcharge on income which is exempt from income-tax under the Income-tax Act, 1961. In *K. Srinivasan's case*[1] the Court declined to express any opinion on the distinction made by the High Court that surcharges are levied under the Finance Act while income-tax was levied under the Income-tax Act (page 351). In the instant case it is not disputed by the revenue that a surcharge partakes of the essential characteristics of income-tax and is an increase in income-tax. What we have to determine is whether the Act of 1963 provides for the levy of additional surcharge.

21. Granting that the word "income-tax" includes surcharges, it may be arguable that the exemption from the payment of income-tax under section 81 (i) (*a*) of the 1961 Act would extend to surcharges. But the matter does not rest with what section 81 (*i*) (a) says. Even if that section were to grant an express exemption from surcharges on business-income, the Parliament could take away that exemption or curtail the benefit available under it by making an appropriate provision in the Finance Act. If while legislating on a matter within its competence the Parliament can grant an exemption, it is surely competent to it to withdraw that exemption in exercise of the self-same power.

22. The Finance Act, 1963, like its annual counter-parts, contains provisions not only prescribing rates of taxation but making extensive and important modifications in the Income-tax Act itself. By sections 4 to 20 of the Act of 1963, various provisions of the Income-tax Act have been amended. By these amendments, some of which are given retrospective effect, old provisions are deleted, new ones are added and indeed new concepts of taxation altogether are introduced. Such innovations fall within the legitimate scope of Finance Acts. Section 11 (14) of the Indian Finance Act, 1945, made the amount of excess profits tax repaid under section 28 of the U.K. Finance Act, 1941, "income" for the purpose of the Indian Income-tax Act and further provided that that "income" shall be "treated" for purposes of assessment to income-tax and super-tax as the income of the previous year. It was held by this Court in *McGregor and Balfour Ltd.* v. *Commissioner of Income-tax, West Bengal*[1], that section 11 (14) charged the amount with a liability to tax by its own force. It was further held that the particular provision, framed as it was, applied to subsequent assessment years just as it applied to the assessment year 1946-47.

1. 83 I.T.R. 346 : (1972) 2 I.T.J. 454 : (1972) 2 S.C.J. 571 : A.I.R. 1972 S.C. 491.

1. 1959 S.C.J. 1037 : 36 I.T.R. 65 : A.I.R. 1959 S.C. 771.

23. Having seen the nature and scope of Finance Acts, the specific question which we have to consider is whether, as contended by the appellant, section 2 read with Paragraph A, Part I of the First Schedule of the Finance Act, 1963 merely lays down a method of computation in cases where income-tax is in fact payable or whether, as contended by the revenue, the Finance Act provides for the levy of a new and independent charge. According to the appellant, these provisions of the Finance Act do not directly or indirectly bring about any amendment to section 81 (i) (*a*) of the Income-tax Act but merely prescribe that in cases where the income-tax is payable, "the amount of income-tax..........shall be increased by the aggregate of the surcharges." The heading "surcharges on income-tax" under which provision is made in the Finance Act for the calculation of a surcharge, a special surcharge and an additional surcharge is also said to bear out the contention that the levy of additional surcharge on the residual income cannot be dissociated from the main charge of income-tax.

24. We are unable to accept this contention. Article 269 (1) of the Constitution provides that the duties and taxes mentioned therein shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2). Article 270 (1) provides that taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2). By Article 271, notwithstanding anything in Articles 269 and 270, Parliament may increase any of the duties or taxes referred in those Articles by a surcharge for purposes of the Union. Surcharges leviable under section 2 (1) of the Finance Act, 1963 are relatable to Article 271 of the Constitution.

25. Section 2 (1) (*a*) (*ii*) of that Article provides, in so far as relevant, that for the assessment year commencing on 1st April, 1963 income-tax shall be charged at the rates specified in Part I of First Schedule and in cases to which Paragraph A of Part I applies, the income-tax shall further be increased by an additional surcharge for purposes of the Union calculated in the manner provided in the First Schedule. Clause (*c*) of Paragraph-A prescribes the manner in which the additional surcharge is to be calculated. It provides that additional surcharge for purposes of the Union shall be calculated "on the amount of the residual income" at the rates mentioned in that clause. Thus, both the purpose and concept of the additional surcharge are different from those of income-tax. The additional surcharge is leviable exclusively for purposes of the Union so that the entire proceeds of such surcharge may, under Article 271 of the Constitution, form part of the Consolidated Fund of India. Taxes and duties mentioned in Article 269 (1), though levied and collected by the Government, have to be assigned to the States in the manner provided in clause (2) of that Article. Then again, the additional surcharge levied for purposes of the Union is to be calculated not on total income like the income-tax but it is to be calculated on the residual income. Section 2 (8) of the Act of 1963 defines residual income as total income reduced by (*a*) capital gains, if any, included in that total income and (*b*) the amount of tax (exclusive of additional surcharge) which would have been chargeable on such reduced total income if it had been the total income no part of which had been exempt from tax and on no portion of which deduction of tax had been admissible. In order that the exemption granted to co-operative banks by section 81 (*i*)

(a) may not lose its meaning and content, section 2 (8) of the Finance Act introduces the concept of residual income on which alone the additional surcharge is payable. The residual income is not the same as the business income of a co-operative bank, which is exempt under section 81 (i) (a) from income-tax. For ascertaining the residual income, the total income is reduced by the amount of capital gains and further by the amount of tax (other than additional surcharge) which would have been charged on such reduced total income on the assumption that the whole of it was liable to be brought to tax.

26. Thus, in the instant case the additional surcharge is not levied on the appellant's business income of Rs. 9,48,335 which is exempt from income-tax and super-tax. It is levied on the residual income of Rs. 5,39,386 which is arrived at after deducting gross taxes (exclusive of additional surcharge) amounting to Rs. 4,60,712 from the assessee's gross income of Rs. 10,00,098. By section 3 of the Finance Act of 1963 no account can be taken of the additional surcharge in calculating any relief, rebate or deduction in respect of income-tax payable on the total income of an assessee which includes any income on which no income-tax is payable or in respect of which a deduction of income-tax is admissible. Section 3, by its terms, has precedence over anything contained in Chapter VII or Chapter VIII-A or in section 110 of the Income-tax Act or section 2 (5) of the Finance Act itself. Additional surcharge is treated in this way as falling in a separate category.

27. Thus, additional surcharge is a distinct charge, not dependent for its leviability on the assessee's liability to pay income-tax or super-tax. Such a qualification cannot be read into section 2 (1) (a) (ii) of the Act of 1963 as argued by the appellant. That section uses the language that "income-tax.....shall further be increased by an additional surcharge", not for making the assessability to surcharge dependent upon assessability to income-tax but for the simple reason that if an assessee's total income includes income on which no tax is payable, tax has all the same to be computed for purposes of rate. Section 110 of the Income-tax Act, 1961, provides that where there is included in the total income of an assessee any income on which no income-tax is payable, the assessee shall be entitled to deduction, from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable. The income-tax computed at a certain rate is by section 2 (1) (a) (ii) to be further increased by an additional surcharge for purposes of the Union. This becomes clearer still from the language of Paragraph A, under the heading "surcharges on income-tax". It says: "The amount of income-tax computed at the rate hereinbefore specified shall be increased by the aggregate on the surcharges." If the intention was to limit the liability to pay additional surcharge to income which can be brought to income-tax, appropriate language could have been used to convey that simple sense.

28. The weakness of the appellant's contention becomes manifest when it is realised that were the contention right, the appellant would not be liable to pay additional surcharge even on that portion of its non-business income which is contained in the residual income. By the definition in section 2 (8) of the Act of 1963, residual income means the total income as reduced and therefore, the non-business income which is chargeable to income-tax must form a component of the residual income.

Concededly, the appellant is liable to pay additional surcharge on its non-business income. This is so, not because additional surcharge is payable by law on non-business income but because it is payable on residual income and residual income, by definition, includes non-business income as reduced. In fact, it consists of the amount of total income as reduced by the amounts mentioned in clauses (*a*) and (*b*) of section 2 (8).

29. Relying on *United Commercial Bank Ltd.* v. *Commissioner of Income-tax, West Bengal*[1]; *East India Housing and Land Development Trust Ltd.* v. *Commissioner of Income-tax, West Bengal*[2] and *K. V. Al. M. Ramanathan Chettiar* v. *Commissioner of Income-tax, Madras*[3] the appellant's counsel urged that income-tax is a single levy, that it is one tax and not so many taxes separately levied on several heads of income. This partly is the same argument in a different disguise that an assessee who is not liable to pay income-tax cannot be made liable to pay additional surcharge under the Finance Act, 1963. We have rejected that contention. Partly, the argument is designed to establish correlation with section 156 of the Income-tax Act, 1961 by which, when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, the Income-tax Officer has to serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable. This provision presents no difficulty for, if an assessee is liable to pay additional surcharge but no income-tax or super-tax, the notice of demand will mention the particular amount payable as tax due. The appellant being liable to pay tax on its non-business income and additional surcharge on its residual income, the demand notice will call for payment of the total amount due from the appellant by way of tax.

30. The interpretation put by us on the Finance Act, 1963 does no violence to section 4 of the Income-tax Act, 1961 under which income-tax at the rates prescribed by the Finance Act is to be charged "in accordance with, and subject to the provisions of", the Income-tax Act. The Income-tax Act exempts the assessee's business income from income-tax and super-tax. The Finance Act brings to tax its residual income.

31. The decision of the Allahabad High Court in *Allahabad District Co-operative Bank Ltd.* v. *Union of India and others*[1], is directly in favour of the appellant and naturally, learned counsel for the appellant relies on it very strongly. But that case, in our opinion, is incorrectly decided. The learned judges were in error in holding that section 2 of the Finance Act, 1963 "does not provide for the levy of a tax other than income-tax" and that therefore, additional surcharge is not payable to the extent of the income which is exempt under section 81 of the Income-tax Act. One of the difficulties which the learned Judges felt in accepting the revenue's contention was that if "the additional surcharge mentioned in the Finance Act of 1963 does not partake of the nature of income-tax it will not be possible to demand and realise it under the provisions of the Income-tax Act, and the notice of demand and recovery proceedings would be vitiated on that account". The very assumption of this observation is fallacious because additional surcharge indubitably partakes of the nature and essential characteristics of income-tax. It is a tax on residual income and by reason of the definition contained in section 2 (8) of the Act of

1. 32 I.T.R. 688 : 1958 S.C.J. 46 : 1958 S.C.R. 79 : A.I.R. 1957 S.C. 918.
2. (1961) 42 I.T.R. 49 (S.C.).
3. 88 I.T.R. 169 : (1973) 1 I.T.J. 502 : (1963) 2 S.C.J. 81 : (1973) 2 M.L.J. (S.C.) 8 : (1973) 2 An.W.R. (S.C.) 8 : A.I.R. 1973 S.C. 2172.

1. (1972) 83 I.T.R. 895 : (1972) Tax L.R. 57.

1963, "residual income" would include non-business income which under the Income-tax Act is chargeable to income-tax. Thus, the additional surcharge, though levied by the Finance Act, 1963 independently of the Income-tax Act, is but a mode of levying tax on a portion of the assessee's income computed in accordance with the definition in section 2 (8) of the Act of 1963. Therefore, the notice of demand under section 156 of the Income-tax Act can lawfully call for the payment of amount due from an assessee by way of additional surcharge.

32. For these reasons, we confirm the judgment of the High Court but in the circumstances there will be no order as to costs.

T.K.K. ——— *Appeal dismissed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT :—*A.N. Ray, CJ., K.K. Mathew, V. R. Krishna Iyer, S. Murtaza Fazl Ali, JJ.*

The Municipal Council, Madurai .. *Appellant**

v.

R. Narayanan, etc. ... *Respondents.*

Madras District Municipalities Act (V of 1920), section 321 (2)—Resolution of Madurai Municipal Council, dated 28th December, 1965 increasing the licence fee imposed on hoteliers—Validity—Fee levied if can be upheld as 'tax'—Levy when fee.

The authority, to justify a leavy *qua* fee must render some special services to the category from whom the amount is exacted and the total sum so collected must have a reasonable correlation to the cost of such services. [*Para.* 2.]

The escalation of licence fee imposed on all hoteliers by the Madurai Municipal Council by its resolution of 28th December, 1965 acting under section 321 (2) of the Madras District Municipalities Act, 1920 is invalid. [*Para.* 17.]

The plea that section 321 (2) lends itself to being regarded as a tax, indifferently described as fee, breaks down for two reasons. When the Legislature has carefully provided in section 78 (3) for previous invitation and consideration of objections to enhancement of tax levies, resort to the device of tax disguised as fee, under section 321 (2) may not require any such procedural fairness and discipline and thus will frustrate the processual protection written into the law in regard to fiscal measures. Secondly, Schedule V with which section 321 is directly linked sets out a host of petty and lucrative ventures all of which theoretically, cannot be carried on except on land or building. Can it be that some flimsy or casual connection with *terra firma* will furnish the legal nexus between the tax imposed and the land on which the work is done ? For example washing soiled clothes is an item in schedule V. It is straining judicial credulity to snapping point to say that such trivial user justifies a tax on the land when washing is done. [*Para.* 16.]

Cases referred to:—

Salvation Army Case, (1975) 1 S.C.C. 509; *Corporation of Calcutta* v. *Liberty Cinema*, (1965) 2 S.C.R. 477 : A.I.R. 1965 S.C. 1107 ; *Ajoy Kumar* v. *Local Board*, (1966) 2 S.C.J. 153: (1965) 3 S.C.R. 47: A.I.R. 1965 S.C. 1561 ; *Atlas Cycle Industries* v. *Haryana*, (1972) 2 S.C.J. 37: 85 I.T.R. 121; (1972) 1 S.C.R. 127: A.I.R. 1972 S.C. 121; *Ralla Ram* v. *The Province of East Punjab*, (1948) F.C.R. 207: (1949) 1 M.L.J. 213: A.I.R. 1949 F.C. 81,

* C.A. Nos. 1656-1659 of 1973.
18th August, 1975.

The Judgment of the Court was delivered by

Krishna Iyer, J.—The die-hard 'tax - fee' dilemma survives, in these appeals, by Special Leave atleast, long after this Court has dispelled the fiscal-legal confusion on the point in a series of rulings. The cases before us were provoked by a sudden escalation of licence 'fee' imposed on all hoteliers by the common appellant, the Madurai Municipal Council (now it is a Corporation, but that makes no difference) (Council, for short). The scale of fees which, perhaps, merely defrayed the cost of issuing the licence, was moderate to begin with and paid periodically by the respondents who run hotels within the municipal limits; but their present grievance is that the resolution of 28th December, 1965, whereby a sharp spurt in the rates of fee was brought about, has been tainted with 'unconstitutionality.'

2. The authority to justify the levy *qua* fee, must render some special services to the category from whom the amount is exacted and the total sum so collected must have a reasonable correlation to the cost of such services. Where these dual basic features are absent, you cannot legally claim from the licencee under the lable ' fee '.

3. This Court has, as late as the *Salvation Army case*[1], set out the tests beyond doubt. When the respondents (writ-petitioners) challenged the fee rise, the plea in defence first was that the impost was a fee strictly socalled, that it was requited by adequate benefits and that the larger lay-out on the inspecting staff and allied items, both necessitated and validated the new increase. However, on later and better reflection, may be, the inspirational source for which was stated to be this Court's pronouncement in the *Liberty Cinema Case*[2], the Council rightly abandoned the *fee-cum quid pro quo* formula and anchored itself on the right to exact the higher rates as a 'tax on land and building' under Entry 49 of List II, in the Seventh Schedule, read with section 321 (2) of the Madras District Municipalities Act, 1920 (for short, the Act). This *volte face*, as it were, was not objected to by the opposite party and the writ petitions and writ appeals were disposed of on that footing. The learned Single Judge upheld the levy but the appellate Bench upset it. The appellant Council has journeyed to this Court to repair the blow on its revenue since there are 1,200 and odd hotel-keepers similarly situated in the Madurai Municipal limits, although only four have figured as respondents here. The financial dimension of the decision is, indeed, considerable.

4. Shri Chellaswamy, counsel for the Council, has been refreshingly fair in his submissions and consistently with the case urged in the High Court to support the levy, has grounded his defence of the fee-hike on the taxing power of the municipal body under the Act. The core of the matter, therefore, is whether the context and text of the statute and other surrounding circumstances warrant the validation of the levy as a tax in essence, be its name what it may.

5. Let us formulate the problems for facility of logical handling. Agreed, as both parties now are, that this licence fee stands or falls *as a tax*, the principal question is whether the fee provided for in section 321 (2) of the Act, under which it is collected, is a tax at all, having regard to the anatomy of the Act. If it can be so regarded, the next point is whether Entry 49 of List II can bring within its constitutional compass the licence fee for running a hotel trade. Thirdly, if that is permissible, are there other incurable infirmities? These apart, some matters of subsidiary

1. (1975) 1 S.C.C. 509.
2. (1965) 2 S.C.R. 477: A.I.R. 1965 S.C. 1107.

moment do arise and may be considered in the appropriate sequence.

6. The initial terminological hurdle in the way of the appellant is that section 321 (2) of the Act authorizes the collection of a licence *fee* in contra-distinction to property *tax* in section 78 of the Act, (Cf. *Ajoy Kumar* v. *Local Board*)[1]. Naturally, Shri A.K. Sen, counsel for contestants, insisted that the Act had made a deliberate dichotomy between the two types of levy, placed them subject-wise in different parts of the statute and meaningfully referred to them as 'tax' and 'fee' in sections 78 and 321 (2), respectively. Counsel for the appellant, relying on certain passages in *Liberty Cinema case*[2] desired us to slur over verbal error. True, mere nomenclature cannot, without more, lead to rejection of the plea of tax, though it is a relevant factor, since to some extent *Liberty Cinema case*[1] has whittled down the efficacy of this circumstance. This Court there observed, at p. 483:

"Now, on the first question, that is, whether the levy is in return for services it is said that it is so because section 548 (of Calcutta Municipal Act XXXIII of 1951) uses the word 'fee'. But, surely, nothing turns on the words used. The word 'fee' cannot be said to have acquired a rigid technical meaning in the English language indicating only a levy in return for services. No authority for such a meaning of the words was cited. However that may be, *it is conceded by the respondent that the Act uses the word 'fee' indiscriminately. It is admitted that some of the levies authorised are taxes though called fees.* Thus, for example, as Mitter J., (in the High Court, Division Bench) pointed out, the levies authorised by sections 218, 222 and 229 are really taxes though called fees, for no services are required to be rendered in respect of them. The Act, therefore, did not intend to use the word fee as referring only to a levy in return for services." (Italics is ours)

1. (1965) 3 S.C.R. 47: (1966) 2 S.C.J. 153: A.I.R. 1965 S.C. 1561.

2. (1965) 2 S.C.R. 477: A.I.R. 1965 S.C. 1107.

7. We have therefore to have a view of the concerned parts of the Act with a comparative eye or the Calcutta Municipal Act which fell for decision in *Liberty Cinema case*[1]. Every local authority, under the relevant statute, has the power to tax, so as to finance the various welfare activities it is expected to fulfil. Similarly such local bodies also exercise the police powers of the State to the extent they are vested in them by the State law for the purpose of controlling, regulating and prescribing operations of individuals which may need to be conditioned by licences and permissions or prohibited in public interest because they are noxious or dangerous. Towards these ends, licences and fees for services, if any, rendered may be prescribed. The Madras Act, like other similar statutes, embraces both types of activities in a systematized way. Thus Taxation and Finance are covered by Part III while Public Health, Safety and Convenience, come under Part IV, Procedure and Miscellaneous, which include general provisions regarding licences and permissions, are clubbed together in Part VI. Section 78, empowering property tax levy, falls in Part III (Taxation and Finance), while section 321, relating to licence fees, is located in Part VI. The scheme thus separates issue of licences and levy of licence fees from taxes on property and other items. *Prima facie*, in the absence of other compelling factors, to lug in a taxing provision into Part VI may, therefore, leads to obscurity and confusion.

1. (1965) 2 S.C.R. 477 : A.I.R. 1965 S.C. 1107.

8. The Calcutta Municpal Act, 1951, also has some scheme of sorts and deals with Finance in Part III, Taxation in Part IV and Public Health, Safety and Convenience in Part V. In the same part, Chapter XXVI deals with a miscellany of matters like Inspection and Regulation of premises, and of Factories, Trade and Places of Public Resort. Section 443 deals with licensing and control of theatres circuses and places of public amusement. Strangely enough, section 548 (1) which relates to licence and written permission 'also empowers' *in addition to any* other matter required to be specified under any other section of this Act.

"(*a*) * * * *

(*b*) * * * *

(*c*) * * * *

(*d*) * * * *

(*e*) the tax or fee, if any, paid for the licence or written permission."

There is thus section 548 an extra power specifically conferred to levy tax or fee, which is significantly absent in the Madras Act (We are aware there is some obscurity here because cinema licensing is provided for earlier in section 443). It is this provision of the Calcutta Act (section 548) which fell for construction before this Court in *Liberty Cinema case*[1]). While one may discern a broad scheme in that Act there is some wobbling in the sense that a power to tax is oddly placed in a Chapter primarily concerned with licences and permissions. The Madras Act, on the other hand, speaks with more precision and relegates licences and licence fees to a Part different from Taxation and Finance. The procedure for each is also delineated separately. For these reasons we refuse to accede to the contention that 'fee' in section 321 (2) is a tax.

9. Shri A.K. Sen, has cited a catena of Madras cases, spread over several decades where, under this very Act, fee has been interpreted as fee with a tag of special services in lieu of such payment. He has further pressed the drafting indifference while using the words 'fee' and 'tax' in section 548 of the Calcutta Act to repeal the application of the observations in *Liberty Cinema case*[1], (earlier quoted) to the provisions of the Madras Act. In the latter, the contrast is boldly projected not only in the phraseology but in the chapter-wise dealing with the two topics. We feel the force of this submission.

10. Shri Chellaswamy sought to counter the contention based on the location of section 321 in a Part which has nothing to do with taxation. In *Liberty Cinema case*[1] this Court had occasion to warn against reaching any conclusion, when there is a tax-fee conflict, based on the collocation of subjects in a statute or the placement of the provisions under a certain rubric as clinching. What is telling is the totality, not some isolated indicium. A short-cut is often a wrong cut and a fuller study of the statute to be construed cannot be avoided. Sarkar, J. (as he then was), in *Liberty Cinema case*[1], observed at page 488:

> "It was also contended that the levy under section 548 (of the Calcutta Municipal Act) must be a fee and not a tax, for all provisions as to taxation are contained in Part IV of the Act, while this section occurred in Chapter XXXVI headed 'Procedure' in Part VIII which was without a heading. It was pointed out that Part V dealt with 'Public Health, Safety and Convenience', and section 443 which was included in Chapter XXVI contained in this Part was headed. 'Inspection and Regulation of Premises, and of Factories, Trades and Places of Public

1. (1965) 2 S.C.R. 477 : A.I.R. 1965 S.C. 1107.

1. (1965) 2 S.C.R. 477 : A.I.R. 1965 S.C. 1107.

'Resort'. A cinema house, it is not disputed, is included in the words 'places of public resort'. It was, therfore, contended that a levy outside Part IV could not be a tax and hence must be a fee for services. This contention was sought to be supported by the argument that section 443 occurred in a Part concerning Public Health, Safety and Convenience and therefore the intention was that the levy authorised by the section would be in return for work done for securing public health, safety and convenience and as hence a fee. We are wholly unable to accept this contention. Whether a particular levy is a fee or tax has to be decided only by reference to the terms of the section as we have earlier stated. Its position in the Act cannot determine its nature; an imposition which is by its terms a tax and not a fee, which, in our opinion the present imposition is, cannot become a fee by reason of its having been placed in a certain part of the statute. The reference to the heading of Part V can at most indicate that the provisions in it were for conferring benefit on the public at large. The cinema house owners paying the levy would not as such owners be getting that benefit. We are not concerned with the benefit, if any, received by them as members of the public for that is not special benefit meant for them. We are clear in our mind that if looking at the terms of the provision authorising the levy, it appear that it is not for special services rendered to the person on whom the levy is imposed, it cannot be a fee wherever it may be placed in the statute. A consideration of where sections 443 and 548 are placed in the Act is irrelevant for determining whether the levy imposed by them is a fee or a tax."

So we do not rest our conclusion solely on the location of section 321 in a different Part from Taxation, while we recognise it as an indicator, among a variety of considerations. Of course, when drafting precision is absent, judicial caution has to be alerted.

11. To recapitulate, in the Madras Act, Chapter VI of Part III is devoted to Taxation and Finance. Section 78 (1) (*a*) authorizes levy of property tax. The section sets out the other taxes a Municipal Council may levy. Section 78 (3) together with a proviso, contains the procedural prescriptions for imposing taxes. Admittedly, there has been no compliance with this procedure and, if such conformance is mandatory, as it is, the case of tax set up by the appellant collapses (Vide: *Atlas Cycle Industries* v. *Haryana*[1]). Whether some minor defect or deficiency will defeat the validity of the tax is moot but since here there is a total failure to adhere or advert to the procedure in section 78, we need not consider hypothetical short-falls and their impacts.

12. Counsel for the appellant resourcefully urged that when two constructions are possible, we should opt in favour of validity since law leans towards life and must sustain, not stifle it. The statute, other things being equal, must be interpreted *ut res magis valeat quam pareat*[2]: see Broom's Lebal Maxims (10 ed.) page 361, Graies on Statutes (6th Edition) page 95 and Maxwell on Statutes (11th edition) page 221. In his submission it is possible to uphold the 'levy' miscalled 'fee', on the basis that it is a tax. The argument is that ignoring the placement of section 321 (2) in Part VI and blurring the precision of the word 'fee' used, we can still look at the pith and substance of the matter and regard it as a 'tax on land and buildings' provided for in Entry 49, List II of the Seventh Sche-

1. (1972) 1 S.C.R. 127 : (1972) 2 S.C.J. 37 : 85 I.T.R. 121 : A.I.R. 1972 S.C. 121.
2. Quoted in Liberty Cinema case p. 484.

dule. He relied on *Ajoy Kumar's case*[1], where also a landholder who was holding a market on his land was directed to take out a licence and pay Rs. 600 per year as licence fee, challenged the validity of the claim on the score that the State had no power to tax markets. Repelling this contention, this Court held that the use to which the land was put furnished sufficient nexus for the Legislature to impose a tax on land. In that connection the following observations lay down the guidelines:

"It is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and therefore if a tax can reasonably be held to be a tax on land it will come within Entry 49. Further it is equally well-settled that tax on land may be based on the annual value of the land and would still be a tax on land and would not be beyond the competence of the State legislature on the ground that it is a tax on income (see *Ralla Ram* v. *The Province of East Punjab*)[2]. It follows therefore that the use to which the land is put can be taken into account in imposing a tax on it within the meaning of Entry 49 of List II, for the annual value of land which can certainly be taken into account in imposing a tax for the purpose of this entry would necessarily depend upon the use to which the land is put". (page 49).

* * * * *

"It will be seen from the provisions of these three sub-sections (sub-sections (1) to (3) of section 62 of the Assam Local Self Government Act (XXV of 1953) that power of the board to impose the tax arises on its passing a resolution that no land within its jurisdiction shall be used as a market. Such resolution clearly affects land within the jurisdiction of the board and on the passing of such a resolution the board gets the further power to issue licence for holding of markets on lands within its jurisdiction by a resolution and also the power to impose an annual tax thereon" (page 49).

* * * * *

"..Section 62 (2) which uses the words 'impose an annual tax thereon' clearly shows that the word 'thereon' refers to any land for which a licence is issued for use as a market and not to the word 'market'. Thus the tax in the present case being on land would clearly be within the competence of the State legislature." (p. 51.)

13. Generally following the line of thinking presented by Shri Chellaswamy based on *Ajoy Kumar*[1] we find difficulty in applying its ratio to section 321 (2). There the *tax* was on land and the expression 'thereon' underscores this idea. Once the tax is on land, the link between the tax and the land-user like running a market or hotel based on the letting value is good, but in the present case there is nothing to indicate that it is a tax at all. Secondly, the phraseology does not suggest that it is a tax on the land or the building. On the other hand it is on the licence-fee for plying a particular trade. It is not possible to blink at this vital distinction between *Ajoy Kumar*[1] and the present case. May be that the Madurai Municipality is perfectly within its competence in imposing a property tax at any particular rate it chooses. The user of the land or building as a restaurant or hotel being the link as explained above, the fact that there is a tax on all property within the municipality does not mean that this local body cannot levy an addi-

1. (1965) 3 S.C.R. 47 : A.I.R. 1965 S.C. 1561.
2. (1948) F.C.R. 207 : (1949) 1 M.L.J. 213 : A.I.R. 1949 F.C. 81.

1. (1965) 3 S.C.R. 47 : A.I.R. 1965 S.C. 1561

tional tax or surcharge on the land or building if put to a particular specialised use. We see no impediment in the municipal authority taxing hotels at a certain rate exercising its power to impose property tax provided there are no other legal impediments in the way. We are not pursuing the existence or otherwise of other impediments because that does not fall for our consideration in this case.

14. Shri A.K. Sen is right in his submission that unlike in the Assam Act considered in *Ajoy Kumar*[1], in the present case we do not even find the expression 'tax' used.

15. The Municipal resolution might have been saved had he been able to spell out a taxing power on property from section 321 (2) of the Act. For, there is no gainsaying the State's right to tax land and buildings and the nexus between the tax and the power may be land use. Since running a restaurant or cinema house is clearly a use of building, a tax *thereon*, based on such user is constitutionally impeccable. Such is not the case here.

16. Thus the plea that section 321 (2) lends itself to being regarded as a tax, indifferently described as fee, breaks down for two reasons. When the Legislature has carefully provided in section 78 (3) for previous invitation and consideration of objections to enhancement of tax levies, resort to the device of that disguised as fee, under section 321 (2), may not require any such procedural fairness and discipline and thus will frustrate the processual protection written into the law in regard to fiscal measures. Secondly, Schedule V, with which section 321 is directly linked, sets out a host of petty and lucrative ventures all of which, theoretically, cannot be carried on except on land or buildings. Can it be that some flimsy or casual connection with *terra firma* will furnish the legal nexus between the tax imposed and the land on which the work is done? For example, washing soiled clothes is an item in Schedule V. It is straining judicial credulity to snapping point to say that such trivial user justifies a tax on the land when washing is done. Running a hotel or market or permanent circus or theatre may stand on a different footing. The commensense of the common man is the best legal consultant in many cases and eschewal of hyper-technical and over-sophisticated legal niceties helps the vision. We cannot list out what, in law, will serve as a nexus between land and tax thereon but, in a given case like a hotel business, land use may easily be discerned. The snag is that in the present appeals the levy is not on land but on the licence for business and bearing in mind the identity of the legal concept, we reject the contention that the impugned resolution was an innocent tax on property. The case falls between two stools. It is not a fee *ex concessionis*; it is not a tax *ex facie*. We further repel the request to read licence-fee in section 321 (2) as land tax into every item of activity set out in Schedule V, from washing soiled clothes on a broad stone to using a central place as posh restaurant.

17. The cumulative result of the multiple submissions we have been addressed is that the impugned resolution is invalid. We do not bar the door for the Municipality or the State to pursue other ways to tax hotel-keepers, acting according to law and under the power to tax in Entry 49, List II of the Seventh Schedule, while dismissing the appeals.

18. The legal controversy in this case is stricken with more than marginal insecurity and, indeed, has exercised our minds on the diverse aspects of law considerably. Moreover, the battle is between a local authority which is in need of financial resources to fulfil its functions and a host of

1. (1965) 3 S.C.R. 47: (1966) 2 S.C.J. 153: A.I.R. 1965 S.C. 1561.

hoteliers who flourish in private business. Bearing in mind the conspectus of circumstances, we regard this case as one where the proper order will be that parties do bear their own costs throughout.

V.K. —— *Appeals dismissed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*V.R. Krishna Iyer, R.S. Sarkaria and A.C. Gupta, JJ.*

The Dollar Company, Madras
... *Applicant**

v.

The Collector of Madras
... *Respondent.*

(A) *Constitution of India* (1950), *Articles* 133 *and* 136—*Award granting compensation in land acquisition proceedings—Appeal to Supreme Court—Interference by Supreme Court—When justified.*

In an appeal from an award granting compensation in land acquisition proceedings, the Supreme Court will not interfere unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Moreover, there is a prudent condition to which the appellate power, generally speaking is subject. A Court of Appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. [*Para.* 4.]

(B) *Land Acquisition Act* (*I of* 1894), *section* 23—*Acquisition of land—Award of compensation—Quantum of compensation—Determination—Criteria.*

* C.A. No. 667 of 1968, *1st May*, 1975.

Compensation for compulsory acquisition, as governed by section 23 of the Land Acquisition Act gives high priority to the market value of the land at the date of the publication of the notification under section 4 (1). The main criterion to determine market value is what a willing purchaser would pay a willing vendor. Ordinarily a party will be entitled to get the amount that he actually and willingly paid for a particular property, provided the transaction be *bona fide* and entered into with due regard to the prevalent market conditions and is proximate in time to the relevant date under section 23. The best evidence of the value of property is the sale of the very property to which the claimant is a party. If the sale is of recent date, then all that need normally be proved is that the sale was between a willing purchaser and a willing seller, that there has not been any appreciable rise or fall since and that nothing has been done on the land during the short interval to raise its value. But if the sale was long ago, may be the Court would examine more recent sales of comparable lands as throwing better light on current land value. [*Para.* 5.]

Propinquity to highway or ports and many industrial and social imponderables enter the verdict of evaluation. So much so it cannot be automatically asserted with reference to a piece of land a mile and half away, that it serves as a guide for fixing the price of the suit plot. [*Para.* 10.]

In the present case the appellant himself purchased the land in question just 10 months before the notification under section 4 at a price of Rs. 410 per ground and laid out a little more money to fill up a pond in it and he had been awarded Rs. 1,800 per ground by the High Court. Can an owner who bought the land at Rs. 410 per ground and laid out a little more money on it grouse on the score of

inadequate or unjust recompense if within a year after his own purchase he is paid by the State 400 per cent. of what he spent for the identical land? It is but fair that compulsory land acquisition while assuring a just equivalent should not be converted into an avaricious windfall.

[*Paras.* 5 *and* 6.]

Case referred to :—

S.L.A. Officer v. *T.A. Setty*, 1959 S.C.J. 431: (1959) 1 S.C.R. (Supp.) 404: A.I.R. 1959 S.C. 429.

M. Natesan, Senior Advocate (*K. Jayaram* and *R. Chandrasekhar*, Advocates, with him), for Appellant.

Govind Swaminathan, Advocate-General (*N.S. Sivam, A.V. Rangan* and *Miss A. Subbhashini*, Advocates, with him), for Respondent.

The Judgment of the Court was delivered by

Krishna Iyer, J.—This is a pedestrian appeal by a land-owner whose property, having been acquired compulsorily by the State, asks for more compensation, probably appetised by increases over the Collector's award granted by the City Civil Court and the High Court. The grounds urged are conventional, based on comparison of prices shown in land sales in the neighbourhood and the general escalation of urban land values in the country.

2. 127 odd 'grounds' (a ground is around 5½ cents; actually 2,400 sq. ft.) were acquired in 1959 for the construction of a housing colony for the Madras Port Trust employees by the then Madras State. They comprise R.S.No. 4032/1 and other items with which we are not concerned, since the owners of those items have not come up in appeal to this Court. The relevant notification under section 4 (1) was made on 12th August, 1959 and so the compensation has to be pegged to the market value as on that date. Of course, 16 years have rolled by since, thanks to delay which has come to stay in the administrative and forensic processes of our land. That is by the way. The Land Acquisition Officer awarded Rs. 800 per ground. The City Civil Court, approaching the problem of valuation plot-wise, as for a housing colony, made the necessary deductions involved in that process and awarded at the rate of Rs. 1,000 per ground. The High Court, on appeal, made an upward revision, discarding the trial Court's approach and awarded Rs. 1,800 per ground. The State has not come up in appeal, but the unquenched claimant asks for more in appeal, demanding, at least Rs. 2,200 per ground.

3. Generally speaking, a cardinal component in the escalation of prices of urban realty which does not find sufficient expression in the ancient Land Acquisition Act, 1894, is the developmental operations, inevitable in a rapidly industrialising society for which the individual owner makes no social contribution. Be that as it may, Courts have to apply the legislation as extant, it being left to the law-makers to harmonize social justice with individual rights by appropriate reforms. We have to proceed to determine the compensation according to the canons crystallized in section 23 of the Act.

4. At the outset, we must warn ourselves of the broad guideline that in an appeal from an award granting compensation this Court will not interfere unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Moreover, there is a prudent

condition to which the appellate power, generally speaking, is subject. A Court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. These twin principles serve as backdrop to our approach to the rival contentions in the case.

5. It is true that compensation for compulsory acquisition, as governed by section 23, gives high priority to the market value of the land at the date of the publication of the notification under section 4, sub-section (1). But what is market value? It is a common place of this branch of jurisprudence that the main criterion is what a willing purchaser would pay a willing vendor. Ordinarily a party will be entitled to get the amount that he actually and willingly paid for a particular property, provided the transaction be *bona fide* and entered into with due regard to the prevalent market conditions and is proximate in time to the relevant date under section 23. We may even say that the best evidence of the value of property is the sale of the very property to which the claimant is a party. If the sale is of recent date, then all that need normally be proved is that the sale was between a willing purchaser and a willing seller, that there has not been any appreciable rise or fall since and that nothing has been done on the land during the short interval to raise its value (*See* Parks 'Principles & Practice of Valuations' page 29—Eastern Law House, Calcutta—IV Edition, 1970). But if the sale was long ago, may be the Court would examine more recent sales of comparable lands as throwing better light on current land value. We emphasize this facet because the appellant himself purchased the land in question just ten months before the notification under section 4 (1), at a price of Rs. 410 per ground. There was a pond in the plot, the filling up of which is alleged to have cost some extra money according to the appellant, but he gave no evidence before the Court on this matter with the result that we are left with the estimate made by the Public Works Department for the filling up of the pond which works out at a much lesser figure. In short, less than a year before the date of commencement of acquisition proceedings, the appellant himself had purchased this land at a price around Rs. 450 (making allowance for the pond which he had filled up) and he has been awarded Rs. 1,800 per ground by the High Court. Instead of wandering around neighbouring lands or guessing as to what the price of the disputed land might have been, we have before us the actual purchase of the suit property by the appellant himself and he has not set up any case of special features or circumstances depressing the land value or affecting the particular transaction so that one could ignore that sale as the product of artificial circumstances. We have thus a situation where the law should express a judgment from the experience of the appellant himself as against a judgment from speculation based on other transactions.

6. Clinching evidence to correct uncertain prophesy is furnished here by the claimant's conduct. An actual transaction with respect to the specific land of recent date is a guide-book that Courts may not neglect when called upon to fix the precise compensation. Viewed from a slightly different aspect, it is but fair that compulsory land-acquisition while assuring a just equivalent should not be converted into an avaricious windfall. Can an owner who bought the land at Rs. 400 per ground and laid out a little more money on it, grouse on the score of inadequate or unjust recompense, if within a year after his own purchase he is paid by the State 400 per cent. of what he spent for the identical land? Neither morality nor legality is violated in such a case; for even a black-marketeer's bosom may

not be uneasy at the prospect of such a fortune which he could not have bargained for when he became the owner of the land some months before. 'It is the duty of the State or Federal Government, in the conduct of the inquest by which compensation is ascertained, to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it'. (*See* 27 Am Jur. 2 paragraph 66, page 53 of Volume 27). All things considered, the appellant stands self-condemned by his own deed of purchase.

7. Property valuation as a practised art is greatly influenced by legal and economic constraints. But, in this case, we do not have any complex considerations since helpful indicators are available. Price paid by the owner recently represents an expression of market value, as *bona fide* evidence of value, subject to such matters as: (*a*) the relationship of the parties; (*b*) the market conditions and the terms of sale; and (*c*) the date of sale. It may not end the enquiry but goes a long way to solve the problem. In this connection it may be useful to refer to the decision of this Court in *S.L.A. Officer* v. *T.A. Setty*[1], where it was observed:

> "It is not disputed that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under section 4 (1) and the methods of valuation may be (1) opinion of experts; (2) the price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired." (Italics ours) (page 432, para. 9).

1. 1959 S.C.J. 431 : (1959) 1 S.C.R. (Supp.) 404 : A.I.R. 1959 S.C. 429.

8. Appreciating this lethal consequence, Sri Natesan, learned counsel, suggested rather obscurely that there might have been peculiar possibilities why this land was sold to his client at a low price. But the reasoning breaks down because the claimant has not even hinted in his pleading or cared to testify what special circumstances played upon the transaction by which he got this identical land at the price he paid. We cannot be swayed by surmises floating in mid-air, particularly where the party who urges these feathery likelihoods stood mute at the trial stage. He failed to speak only to become a martyr for silence.

9. Sri Natesan switched on to the prices of other lands in the locality to overcome the self-created obstacle of his client's purchase. This is specious logic. When decisive evidence of the market value of the land compulsorily acquired is unavailable you seek light from comparable neighbourhood. Such is not the case here. Even so, we travelled with counsel on to other lands, to gather whether any grave error had crept into the High Court's assessment. The discovery made was that lands in the near neighbourhood were sold sometime earlier at prices ranging from Rs. 300 to Rs. 400 and in one case Rs. 900 (Exhibits R-2 to R-7) while distant neighbours, like that covered by Exhibit C-11 were valued by Court at around Rs. 2,200 or Rs. 2,400 per ground. This wide disparity may be a trifle mystifying. Even so, we go by lands close by and not by one a mile-and-half away as Exhibit C-11 plot. In an industrial area, land prices are sensitive to an intricate variety of factors.

10. Propinquity to highway or ports and many industrial and social imponderables enter the verdict of evaluation. So much so we cannot automatically assert, with reference to a piece of land a mile-and-half away, that it serves as a guide for fixing the price of the suit plot.

What the High Court has done is to have at the back of its mind the various sales, Exhibits R-2 to R-7, which fall far below the value demanded by the claimant and the high prices awarded by the same High Court in regard to other lands distances away, have regard to the then growing industrial potential and make an intelligent guess. May be as the learned Advocate-General has pointed out, in the light of evidence regarding the precise land and the particular owner, there was no justification for awarding such a high price as has been done but the State has not bothered to come up in appeal and we cannot hold that the High Court was in error in making out of the totality of materials available, a best judgment-assessment of the market value. No serious flaw in principle, no omission to consider important material or like infirmity has been pointed out to fault the judges on the appraisal.

11. Nevertheless, Sri Natesan contended strenuously that the sales showing low prices were not reliable for two reasons. They were "distress" sales and prices had gone up from the dates of those deeds which were of 1949-50. Neither argument is conclusive. True, a few of the sales suggest some pressure inducing the vendors to dispose of their land. But there are other deeds which are unblemished by any such depressant. Having gone through the documents in question we are satisfied that none of the sales bear marks of throw away prices.

12. The other argument that prices must have inexorably risen from 1949 to 1959 is no axiomatic proposition. True, generally speaking, there has been an inflationary spiral in India which has not spared realty. But there is evidence in the present case to show that between 1949 and 1952 lands in this very area stood stationary in their prices. Various geo-economic factors have affected land prices, some, to boost them, others to slump them. Therefore we cannot be persuaded to hold that a relentless rise in land prices has come to stay. Take but one example: If a land adjoins a factory which needs to be expanded further, a higher price may be offered by that factory owner. Likewise, if a heavy tax on construction of buildings or ceiling on vacant urban land is in the offing, prices of building sites may come down. It may even be said that such a factor as the application of the MISA to smugglers may depress prices of many items, including land and foreign cars, in certain places. Another exotic example: In some American cities the influx of certain coloured races into the down-town area brings down the market value of real estate, under current social conditions.

13. While it is true that the area we are concerned with is an industrial belt, we cannot forget that there are housing colonies also as adjuncts so that some lands may be less suitable for industrial buildings but may still be useful for workers' houses. It is in evidence that the plots acquired here had ponds, the appellant himself having filled up the pond in his plot. This shows incidentally that high-rising constructions may require pile-driving at high cost. We need not guess at the various chancy factors except to state that having due regard to the conspectus of circumstances, including the appellant's own cost price, the Court has made a sound judgment. In this view, we do not think there is need for further discussion of the facts pressed before us by the appellant. We agree with him that the purpose for which the land is acquired has no bearing on the value to be determined by the Court but our conclusion remains unaltered.

14. We see no reason, no law nor justice, to interfere with the judgment under appeal.

May be, the appellant is aggrieved that slightly inferior lands acquired simultaneously and adjoining his plot have been given the same value as has been awarded to him. It may also be that each Court he has approached has improved upon the price awarded by the earlier one and therefore he might have obtained certificate hopefully. And looking at his lost land now, years later, when real estate has risen in price much more, he may sigh at what is fixed and strive to get more. But a closer examination has disclosed no error in principle in the High Court's judgment nor has any of the limited grounds on which this Court's jurisdiction can be legitimately exercised been made out.

15. The appeal is dismissed but, in the circumstances, without costs.

V.K. —— *Appeal dismissed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*V.R. Krishna Iyer, R.S. Sarkaria and A.C. Gupta, JJ.*

Joint Commercial Tax Officer, Division III, Madras .. *Appellant**

v.

M/s. Spencer and Company etc., etc. .. *Respondents.*

Madras General Sales Tax Act (I of 1959), sections 2 (q), (r) and 3 (1)—Dealer in foreign liquor—Determination of total turnover—Sales tax collected by dealer under section 21-A of Madras Prohibition Act—If can be treated as part of his total turnover exigible to tax.

Under section 21-A of the Madras Prohibition Act, 1937, the sales tax which the section requires the seller of foreign liquor to collect from the purchaser is a tax on the purchaser and not on the seller. Under section 21-A the tax payable is on the price of the liquor and that tax is to be paid by the purchaser, the seller is required to collect the tax from the purchaser which he has to pay over to the Government. Section 21-A makes the seller a collector of tax for the Government and the amount collected by him as tax under this section cannot therefore be a part of his turnover. Under the Madras General Sales Tax Act, the dealer has no statutory duty to collect the sales tax payable by him from his customer and when the dealer passes on to the customer the amount of tax which the former is liable to pay, the said amount does not cease to be the price for the goods although the price is expressed as X plus purchase tax. But the amounts collected by the dealer under a statutory obligation cannot be a part of his taxable turnover under the Madras General Sales Tax Act, 1959. [*Para.* 3.]

Cases referred to :

M/s. George Oakes (P.) Ltd. v. *State of Madras*, (1962) 2 S.C.R. 570 : (1962) 1 S.C.J. 300 : (1962) 1 An.W.R. (S.C.) 142 : (1962) 1 M.L.J. (S.C.) 142 : A.I.R. 1962 S.C. 1037 ; *State of Kerala* v. *Ramaswamy Iyer and Sons*, (1966) 3 S.C.R. 582 : (1967) 1 S.C.J. 55 : A.I.R. 1966 S.C. 1738 ; *Delhi Cloth and General Mills Ltd.* v. *Commissioner of Sales Tax*, (1971) S.C.R. (Supp.) 945 : (1971) Tax L.R. 1510 : (1972) 2 S.C.J. 513 : A.I.R. 1971 S.C. 2216 ; *Paprika Ltd.* v. *Board of Trade*, (1944) 1 All E.R. 372.

S. Govind Swaminathan, Advocate-General, for the State of Tamil Nadu (*K. Venkataswami, N.S. Sivam, A. V. Rangam* and *Miss A. Subhashini*, Advocates, with him), for Appellant in Civil Appeals Nos. 2005-2008 and 2013-2016 of 1970.

*C.As. Nos. 2005 to 2016 of 1970. *2nd May*, 1975.

T. A. Ramachandran, Advocate, for Respondents in C.A. Nos. 2009-2012 of 1970.

Vineet Kumar, Advocate, for Respondent No. 1.

The Judgment of the Court was delivered by

Gupta, J.—These twelve appeals arise out of a common Judgment of the Madras High Court disposing of the writ petitions filed by the respondents in which they challenged certain orders of the assessing authority under the Madras General Sales Tax Act,1959, proposing to re-determine the taxable turnover of the respondents by including the sale-price of foreign liquor which, it was alleged, had escaped assessment. The High Court directed the sales tax authorities not to include in the assessable turnover the tax paid by the respondents under section 21-A of the Madras Prohibition Act, 1937. In these appeals, brought on certificate of fitness, the correctness of the High Court's decision is questioned by the sales tax authorities. The appeals have three different assessees as respondents and relate to different assessment years concerning each assessee, ranging from 1959-60 to 1964-65.

2. The assessees are dealers in foreign liquor, among other goods. They have been assessed to sales tax as dealers on sales or purchases of other goods under section 3 (1) of the Madras General Sales Tax Act, 1959. Section 3 (1) is the charging section providing generally that a dealer whose total turnover for a year is not less than the specified amount, shall pay a tax for each year at the specified rate. 'Turnover' is defined in section 2 (*r*) of the Act. The relevant part of the definition is as follows :

> "'Turnover' means the aggregate amount for which goods are brought or sold or supplied or distributed, by a dealer, either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration....."

'Total turnover' is defined in section 2 (*q*) of the Act as "the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax". The question is whether the 'sales tax' collected by these assessees under section 21-A of the Madras Prohibition Act, 1937 can be treated as part of their total turnover. Section 21-A, so far as it is relevant for the present purpose, is in these terms :

> "Every person or institution which sells foreign liquor—
>
> (*a*) * * * *
>
> (*b*) * * * *
>
> shall collect from the purchaser and pay over to the Government at such intervals and in such manner as may be prescribed, a sales tax calculated at the rate of eight annas in the rupee, or at such other rate as may be notified by the Government from time to time on the price of the liquor so sold."

Counsel for the appellants contended relying on seveal decisions of this Court to which we shall presently refer, that the amounts collected by the assessees by way of sales tax from the purchasers were part of their total turnover and as such liable to be taxed under section 3 (1) of the Madras General Sales Tax Act, 1959. In *M/s. George Oakes (P.) Ltd. v. State of Madras*[1], this Court considered the question whether inclusion of the amounts collected by the appellants in that case as sales tax under the Madras General Sales

1. (1962) 1 S.C.J. 300 : (1962) 1 An.W.R. (S.C.) 142 : (1962) 1 M.L.J. (S.C.) 142 ; (1962) 2 S.C.R. 570 : A.I.R. 1962 S.C. 1037.

Tax Act, 1939, was valid. The expression 'turnover' in the 1939 Act meant, as it does in the 1959 Act, aggregate amount for which goods are bought or sold, whether for cash or for deferred payment or other valuable consideration. This Court observed :

"when a sale attracts purchase tax and the tax is passed on to the consumer, what the buyer has to pay for the goods includes the tax as well and the aggregate amount so paid would fall within the definition of turnover..so far as the purchaser is concerned, he pays for the goods what the seller demands, *viz.*, price even though it may include tax. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover."

A similar view was taken by this Court in *State of Kerala* v. *Ramaswamy Iyer & Sons*[1]. This was a case under the Travancore-Cochin General Sales Tax Act, 1950. Here also the decision turned on the definition of 'turnover', which is similar to the definition of the term in the Madras General Sales Tax Act, 1959. The position was further explained in *Delhi Cloth and General Mills Ltd.* v. *Commissioner of Sales Tax, Indore*[2], which was a case under the Madhya Pradesh General Sales Tax Act, 1958. The relevant provisions of this Act appear to be similar to those of the Madras General Sales Tax Act, 1959. Stating that the liability to pay tax under the Act is that of the dealer, Hegde, J., speaking for the Court said that the Act did not confer

"any statutory power on the dealer to collect sales tax as such from any class of buyers.... unless the price of an article is controlled, it is always open to the buyer and the seller to agree upon the price to be payable. While doing so it is open to the dealer to include in the price the tax payable by him to the Government. If he does so, he cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers same can only be considered as valuable consideration for the goods sold."

3. It is clear from section 21-A of the Madras Prohibition Act, 1937, that the sales tax which the section requires the seller of foreign liquor to collect from the purchaser is a tax on the purchaser and not on the seller. This is what makes the authorities on which counsel for the appellants relied inapplicable to the cases before us. Under section 21-A the tax payable is on the price of the liquor and that tax is to be paid by the purchaser, the seller is required to collect the tax from the purchaser, which he has to pay over to the Government. Section 21-A makes the seller a collector of tax for the Government, and the amount collected by him as tax under this section cannot therefore be a part of his turnover. Under the Madras General Sales Tax Act, 1959, the dealer has no statutory duty to collect the sales tax payable by him from his custo mer and when the dealer passes on to the customer the amount of tax which the former is liable to pay the said amount does not cease to be the price for the goods although "the price is expressed as *X* plus purchase tax" *Paprika Ltd.* v. *Board of*

1. (1967) 1 S.C.J. 55 : (1966) 3 S.C.R. 582: A.I.R. 1966 S.C. 1738.
2. 1971 S.C.R. (Supp.) 945: 1971 Tax. L.R. 1510 : (1972) 2 S.C.J. 513 : A.I.R. 1971 S.C. 2216.

Trade[1]. But the amounts collected by the assessees concerned in these appeals under a statutory obligation cannot be a part of their taxable turnover under the Madras General Sales Tax Act, 1959.

4. The appeals are dismissed with costs; one hearing fee.

V. K. —— *Appeals dismissed.*

THE SUPREME COURT OF INDIA.

PRESENT :—*A. Alagiriswami, P. K. Goswami and N. L. Untwalia, JJ.*

S. M. Gopalakrishna Chetty .. *Appellant**

v.

Ganeshan and others. .. *Respondents.*

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 14 (1) (b)—*Holder of life estate in premises—If can evict tenant on the ground that the building is required for demolition and reconstruction—Single petition with regard to two different tenancies in the same premises—Maintainability.*

A landlord, who is merely the holder of a life interest in the property, is entitled to evict the tenants under section 14 (1) (*b*) of the Madras Buildings (Lease and Rent Control) Act on the ground that the building is *bona fide* required by the landlord for demolition and for reconstruction. [*Para.* 7.]

The Madras Rent Control Act is a self-contained and complete code for regulation of the rights between landlord and tenants as defined in the Act. Thus a controversy that may arise between a landlord and others, who are not his tenants under the Act, is outside the ken of this Act. Even a possible dispute, imaginary or real, between the landlord and the remainder-men cannot affect adjudication of the claim of the landlord against his tenants under the provisions of the Act. It will also not affect the efficacy of the nature of the plea of *bona fide* on the part of the landlord if otherwise so. Such questions are irrelevant in a litigation between the landlord and tenants when a suit for eviction is instituted by the former on any of the grounds available to him under the Act. It is clear that when the objection on the score of the landlord being a holder of life-interest and hence incapable of invoking section 14 (1) fails the suit must be decreed. [*Para.* 8.]

A single petition with regard to two different tenancies, in the same premises, one for residential purpose and the other for non-residential purpose, is maintainable when the tenancy is one. [*Para.* 10.]

Case referred to:

M/s. Raval and Company v. *K. G. Ramachandran,* (1974) 1 S.C.C. 424 : A.I.R. 1974 S.C. 818.

K. S. Ramamurthi, Senior Advocate (*T. N. Vallinayagam, R. N. Nath* and *V. Mayakrishnan,* Advocates, with him), for Appellant.

The judgment of the Court was delivered by

Goswami, J.—These appeals by Special Leave are directed against the order of the High Court of Madras in three Civil Revision Petitions under section 25 of the Madras Buildings (Lease and Rent Control) Act, 1960 (briefly the Act) whereby the High Court refused to interfere with the orders of the Appellate Authority under the Act holding that the appellant (hereinafter to be described as the landlord) has no right to evict the respondents (hereinafter to be described as the tenants) from the premises in question on the ground of demolition and reconstruction,

1. (1944) 1 All E.R. 372.
* C.A. Nos. 493–495 of 1974.
11*th August,* 1975.

2. The tenancy under the landlord is admitted by the tenants. There is also no question with regard to the validity of the notice of eviction. The only questions in controversy in these appeals are whether the landlord in this case, who is the holder of life interest in the property, is entitled to evict the tenants under section 14 (1) (*b*) of the Act on the ground that the building is *bona fide* required by the landlord for demolition and for reconstruction. The second question raised in one of the appeals is whether a single petition is maintainable to evict the tenants from two different tenancies, one for residential purpose and the other for non-residential purpose. The latter point has been held by the High Court in favour of the landlord but the tenants are raising it in seeking to support the earlier order of the appellate authority.

3. The premises are situated at Anna Pillai Street, Madras. Originally the premises belonged to late S. Manicka Chettyar, father of S.M. Gopalakrishna, the present landlord. By virtue of a Deed of Settlement executed by S. Manicka Chettyar on 9th May, 1934, possession of the premises was delivered to his wife, Manoranjithammal, as trustee and guardian of his three minor children, S.M. Gopalakrishna, then aged 13 years, and his two minor daughters, Indirani Ammal and Palani Ammal. We are not concerned with the various directions in the Deed of Settlement except to note the admitted position that Manoranjithammal was allowed to enjoy the rents and profits of the property for her lifetime subject to certain charges mentioned in the Deed. After the lifetime of the settlor's wife, his son S.M. Goplakrishna (appellant) "shall enjoy the rents and profits of the said property.......... for his lifetime" subject to certain charges on account of his two sisters. It is further mentioned in the Deed that after the lifetime of Goplakrishna, his son and son's heir of any predeceased son living at that time shall enjoy the property subject to identical charges as absolute owners with right of sale, gift, etc. There are further directions in case of other contingencies with which we are not concerned. We may, however note that S.M. Gopalakrishna is issueless.

4. From the above terms of the Settlement it is contended by the tenants that the landlord has only a life interest in the premises in question and that it is inherent in such a life interest that it is not permissible for the landlord to invoke section 14(1) (*b*) as grounds for eviction of the tenants by demolition of the property for the purpose of reconstruction. It is emphasised that since the interest of the remaindermen may be prejudiced, the landlord with a life interest in the premises cannot evict the tenants on these grounds.

5. The Rent Controller held that the requirement of the landlord was *bona fide* and ordered for eviction of the tenants. The Court of Small Causes, which is the appellate authority, allowed the appeals lodged by the tenants against the orders of eviction and set aside the orders of eviction. As noticed earlier the High Court refused to interfere in revision.

6. The High Court agreed with the view of the appellate authority that the landlord had no right to ask for eviction of the respondents on the ground of demolition and reconstruction, he admittedly having only a life interest or right to enjoy the property for his life. The appellant submits that this view is not legally tenable.

7. Before we proceed to consider the point in controversy, we may read section 14 (1) (*b*) :

"14. Recovery of possession by landlord for repairs or for reconstruction—

> (1) Notwithstanding anything contained in this Act, but subject to the provisions of sections 12 and 13 on an application made by a landlord, the Controller shall, if he is satisfied—
>
> * * * * *
>
> (*b*) that the building is *bona fide* required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date."

The expression landlord is defined under section 2 (6) as follows :

> " 'Landlord ' includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant."

This inclusive definition of landlord would clearly take in its sweep the present landlord who holds a life interest in the premises and who admittedly has been on his own right under the Deed of Settlement as a trustee receiving rents of the premises from the tenants. We are not even concerned with the question as has been sought to be established in the case by proving that there is no possibility of any objection from the daughters of the settlor or from any other remainder-men. It is sufficient to observe that the rights between S.M. Goplakrishna and the remainder-men with regard to the terms of the Deed of Settlement will have to be worked out in appropriate proceeding if necessary, and the general law will govern the matter if any occasion arises.

8. On the other hand, the Act with which we are concerned is a self-contained and complete code for regulation of the rights between landlord and tenants as defined in the Act (See *M/s. Raval and Co.* v. *K. G. Ramachandran*[1]). Thus a controversy that may arise between a landlord and others, who are not his tenants under the Act is, outside the ken of this Act. Even a possible dispute, imaginary or real, between the landlord and the remainder-men cannot affect adjudication of the claim of the landlord against his tenants under the provisions of the Act. It will also not affect the efficacy of the nature of the plea of *bonā fide* on the part of the landlord, it otherwise so. Such questions as are raised in this appeal by the tenants are, therefore, irrelevant in a litigation between the landlord and tenants when a suit for eviction is instituted by the former on any of the grounds available to him under the Act. It is clear that where the objection on the score of the landlord being a holder of life interest and hence incapable of invoking section 14 (1) (*b*) fails the suit must be decreed.

9. It was strenuously submitted by Mr. Natesan that a tenant with a life interest cannot be allowed to demolish the property in order to reconstruct it as that action would, *per se*, be not *bona fide*. We are unable to accede to this submission. A landlord has every right to demolish his property in order to build a new structure on the site with a view to improve his business or to get better returns on his investment. Such a step *per se*, cannot be characterised as *mala fide* on the part of the landlord. There is, therefore, no merit in this contention.

10. Mr. Natesan faintly submitted that a single petition with regard to two different tenancies, although in the same premises, one for residential purpose and the other for non-residential purpose, is

1. (1974) 1 S.C.C. 424 : A.I.R. 1974 S.C. 818,

not maintainable. We do not find any substance in such a contention when the tenancy is one.

11. In the result the appeals are allowed and the order of the High Court as well as that of the appellate authority are set aside. The order of the Controller allowing eviction of the tenants stands restored. We will however, allow time to the tenants upto 1st January, 1976 to vacate the premises on the distinct condition that they shall submit affidavits in this Court undertaking to vacate the premises by the aforesaid date within two weeks from to-day. The appellant will be entitled to his costs in these appeals. One set of costs.

V.K. .. ——— *Appeals allowed.*

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*H.R. Khanna* and *P.K. Goswami, JJ.*

The State of Madras .. *Appellant**

v.

K. N. Shanmugha Mudaliar and others .. *Respondents**

Land Acquisition Act (I of 1894), section 4—Notification under—Subsequent notification of the same land under Madras Estates Abolition Act (XXVI of 1948)—Award of compensation and reference to Court—Respondents, if entitled to compensation.

On 12th July, 1949, notification under section 4 of the Land Acquisition Act was issued for the acquisition of the land of the respondents for the Salem Fair Lands Co-operative Society Ltd. On 19th December, 1950, the land in question was notified under the Madras Estates Abolition Act. A writ petition was filed in the High Court to challenge that notification. Further proceedings in pursuance of the notification were stayed by the High Court. The Society for which acquisition was being made deposited the probable cost of the land. Against the award of the Land Acquisition Officer at the instance of the respondents, a reference to the Court under section 18 was made. The Subordinate Judge held that the respondents were entitled to 50 per cent. of the compensation awarded in respect of the kudiwaram interest in the land. On appeal, the High Court rejected the contention of the appellant—State that, as the land had vested in the Government under the Abolition Act, the respondents were not entitled to compensation under the Land Acquisition Act.

Dismissing the appeal filed by the State on the basis of the certificate granted by the High Court,

Held, There were two alternative courses open to the State, either to proceed under the Land Acquisition Act or to take over the land under the Abolition Act. Although the estate was notified under the Abolition Act, the proceedings under the Act were stayed and the matter proceeded under the Land Acquisition Act. The underlying assumption of the proceedings under the Land Acquisition Act was that the respondents had an interest in the land. If it was the case of the appellant that the respondents had been divested of their interest in the land and the same had vested in the State, the appellant should have taken appropriate steps to make such a claim in accordance with law. No such claim had been made.

[*Para.* 5.]

A. V. Rangam and *Miss Subhashini*, for Appellant.

K. Jayaram and *R. Chandrasekher*, Advocate, for Respondent No. 1.

Respondents Nos. 2-8, *ex parte*.

The judgment of the Court was delivered by

Khanna, J.—This appeal on certificate is by the State of Madras, now Tamil Nadu

* C.A. No. 1425 of 1968. 4th *March*, 1976.

against the Judgment of the Madras High Court affirming on appeal the award of the learned Subordinate Judge, Salem in respect of the amount of compensation payable to the respondents for acquisition of, land under the Land Acquisition Act (I of 1894) (hereinafter referred to as the Act). The High Court, however, directed that the interest on the amount awarded shall run from 19th November, 1951, the date of the award by the Land Acquisition Officer and not from 1st December, 1949 as ordered by the Subordinate Judge.

2. On 12th July, 1949, notification under section 4 of the Act was issued for the acquisition of 19 acres 45 cents of dry land situated in Alagapuram Mitta for the Salem Fair Lands Co-operative Society Land. On 19th December, 1950, Alagapuram Mitta was notified under the Madras Estates Abolition Act (XXVI of 1948) (hereinafter referred to as the Abolition Act). A writ petition was filed in the High Court to challenge that notification. Further proceedings in pursuance of the notification were stayed by the High Court by order dated 1st January, 1951. The Society for which acquisition was being made deposited in the meantime the probable cost of the land on 13th September, 1950. On 19th November, 1951 the Land Acquisition Officer announced his award.

3. The respondents, it may be stated, were the melvaramdars (landholders) of the land in question. kudiwaramdars (cultivators) were also, besides the respondents, parties to the proceedings before the Land Acquisition Officer. The Land Acquisition Officer by his award dated 19th November, 1951 awarded compensation to the cultivators at the rate of Rs. 1,500 per acre for part of the land near the road and at the rate of Rs. 1,300 per acre for the rest of the land. Rs. 520-11-1 the capitalised value of the net rental income was held to be the amount payable to the respondents. The kudiwaramdars were content with the compensation awarded to them, but the respondents who were, as already mentioned above, melvaramdars asked for a reference to Court under section 18 of the Act. for claiming enhanced compensation. According to the respondents, they were entitled to one-third of the value of the totality of the interest in the land. According to the respondents, compensation for the total land should be awarded at the rate of Rs. 3,000 per acre. Learned Subordinate Judge held that the respondents were entitled to 50 per cent. of the compensation awarded in respect of the kudiwaram interest in the land. The Subordinate Judge in this context relied upon an earlier decision of the Madras High Court where in it had been held that the rights of melvaramdars were not confined only to rent from land and that they had other recognised rights and were entitled to compensation for those rights. The respondents were thus held entitled to compensation for their melvaramdar interest at the rate of Rs. 750 per acre in respect of land near the road and Rs. 650 per acre in respect of the remaining land. Interest was awarded to the respondents on the compensation amount from 1st December, 1949 because, in the opinion of the Subordinate Judge, possession of the land had been taken from that date.

4. On appeal the High Court affirmed the decision of the Subordinate Judge regarding the rate of compensation. The contention advanced on behalf of the appellant that as the land had vested in the Government under the Abolition Act, the respondents were not entitled to compensation under the Land Acquisition Act, was rejected. It was observed that in the land acquisition proceedings the Government was estopped from denying the absence of any interest in the claimants whom the Government had made parties to the proceedings. Regarding the date from which interest on the

amount of compensation should accrue, the High Court found that there was no material on the record to show that possession of the land had been taken prior to the date of the award by the Land Acquisition Officer. Interest was accordingly directed to run from the date of the award.

5. In appeal before us Mr. Rangam on behalf of the appellant-State has urged that as the land in question has vested under the Abolition Act in the State the respondents are not entitled to compensation under the Land Acquisition Act. We find it difficult to accede to this submission, for we are of the opinion that in case the State wanted to take over the land under the Abolition Act it should not have proceeded to acquire the interest of the respondents in the land in dispute under the Land Acquisition Act. There were two alternative courses open to the State, either to proceed under the Land Acquisition Act or to take over the land under the Abolition Act. Although the estate was notified under the Abolition Act, the proceedings under that Act were stayed and the matter proceeded under the Land Acquisition Act. As the proceedings which were continued were under the Land Acquisition Act the compensation payable had also to be paid in accordance with the provisions of that Act. The reference which was made by the Land Acquisition Officer to the Subordinate Judge under section 18 of the Land Acquisition Act was with respect to the quantum of compensation payable to the respondents because the respondents had felt dissatisfied with the amount awarded to them as compensation by the said Officer. The underlying assumption of these proceedings was that the respondents had an interest in the land. If it was the case of the appellant that the respondents had been divested of their interests in the land and the same had vested in the appellant-State, the appellant should have taken appropriate steps to make such a claim in accordance with law. No such claim seems to have been made. The High Court expressly left open the question of the claim of the State Government to the amount of compensation deposited on the score that melwaramdar respondents were not entitled to it by reason of having lost all their interest in the land at the relevant point of time. We agree with the High Court that it was not open to the appellant-State in the particular reference made at the instance of the respondents to the Subordinate Judge to set up a claim adverse to the interest of the respondents. There is also we find nothing in the award of the learned Subordinate Judge to show that any question was raised before him that the amount of compensation was not payable to the respondents in accordance with the provisions of the Land Acquisition Act. This question appears to have been agitated for the first time only in the appeal before the High Court. The High Court rejected the contention in this behalf. We find no cogent ground to take a different view.

6. As regards the quantum of compensation, the High Court has referred to the previous decisions which show that the formula generally adopted is to pay one-third of the total compensation to melvaramdars and two-thirds of the compensation to kudiwaramdars. In accordance with that formula, the respondents would be entitled to one half of the compensation payable to kudiwaramdars. Both the Subordinate Judge and the High Court awarded compensation in accordance with this formula. No cogent ground has been shown to us as to why we should interefere with the concurrent finding in this respect. We also find no reason to disagree with the High Court regarding the date from which interest should run on the amount of compensation.

7. The appeal fails and its dismissed with costs.

V.M.K. — Appeal dismissed.

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